

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
SUN RIVER BASIN (41K)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: 38 Dracut Hill LLC

**CASE 41K-0154-R-2023**

41K 144907-00

41K 144908-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

The above-captioned claims appeared in the Preliminary Decree for the Sun River (Basin 41K) with the following issue remarks:

41K 144907-00:

MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41K 144908-00:

**THE FLOW RATE IS MISSING.**

The flow rate remark on claim 41K 144908-00 was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark.

Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The Statement of Claim form for claim 41K 144908-00 claimed the flow rate as .023 CFS (10.3 GPM). On June 12, 2023, the above-captioned claims were consolidated into Water Court Case 41K-0154-R-2023 and a filing deadline was set, ordering the claimant to file documentation regarding reinstating the claimed flow rate to resolve the issue remark. The Order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the flow rate for claim 41K 144908-00 should be corrected to 10.3 GPM as originally claimed”. Nothing was filed in response to the Order.

### **FINDINGS OF FACT**

1. Pursuant to the Statement of Claim and the June 12, 2023 Order Consolidating and Order Setting Filing Deadline, the flow rate for claim 41K 144908-00 should be modified to 10.3 GPM. Reinstating the claimed flow rate resolves the issue remark on the claim.

2. The remark on claim 41K 144907-00 is a notice-type remark that has served its purpose and should be removed from the claim.

### **PRINCIPLES OF LAW**

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

### **CONCLUSIONS OF LAW**

1. The issue remark on claim 41K 144908-00 should be removed from the claim as reinstatement of the claimed flow rate resolves the issue identified by the remark.
2. The issue remark appearing on claim 41K 144907-00 is a notice type remark that has served its purpose and should be removed from the claim.

### **RECOMMENDATION**

1. Upon review the record in this case, the flow rate for claim 41K 144908-00 should be modified to 10.3 GPM and the issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

38 Dracut Hill LLC  
14741 Road 295 S.  
Box Elder, MT 59521-8700

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SUN RIVER**  
**BASIN 41K**

**Water Right Number:** 41K 144907-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** 38 DRACUT HILL LLC  
14741 ROAD 295 S  
BOX ELDER, MT 59521 8700

**Priority Date:** DECEMBER 1, 1939

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF HUBER COULEE

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	11	21N	1W	CASCADE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSESW	11	21N	1W	CASCADE

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSESW	11	21N	1W	CASCADE

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 144908-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** 38 DRACUT HILL LLC  
14741 ROAD 295 S  
BOX ELDER, MT 59521 8700

**Priority Date:** DECEMBER 1, 1939

**Type of Historical Right:** FILED

**Purpose (use):** DOMESTIC

**Flow Rate:** 10.30 GPM

**Volume:** 1.70 AC-FT

**Households:** 1

**Maximum Acres:** 1.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF HUBER COULEE

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	11	21N	1W	CASCADE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PUMP

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		SWSESW	11	21N	1W	CASCADE

**Total:** 1.00